SINGLE BENCH

IN THE HON'BLE HIGH COURT OF JUDICATURE AT BILASPUR

(CHHATTISGARH)

WRIT PETITION NO. 6572 OF 2005

PETITIONER : Laxmichand Kaushik Son of Shri Makhanlal Kaushik, aged about 45 years, Clerk,. Assistant Grade-III, Presently posted at Water Resources Department, Division Kanker, District Raipur (C.G.).

VERSUS

RESPONDENTS :

1. State of Chhattisgarh, Through: The Secretary, Water Resources Department, D.K.S. Bhawan, Mantralaya, Raipur (C.G.).
2. The Engineer in Chief, Water Resources Department, Sihawa Bhawan, Raipur (C.G.).
3. The Executive Engineer, Water Resources Department, Division Kanker, District Kanker (C.G.).
4. Shri Janardan Singh, Executive Engineer, Water Resources Department, Presently posted at Mahanadi Godawari Basin, Water Resources Department, Raipur (C.G.).
5. Shri D.P. Pandey, Executive Engineer, Water Resources Department, Division Kanker, District Kanker (C.G.).
6. Shri R. C. Mishra, Senior Accounts, Clerk, Assistant Grade-II, Water Resources Department, Division Kanker, District Kanker (C.G.).

P.R. No. 6507/05 Presented by Advocate dated 21/12/05

RECEIVED-COPY 21/12/05 CLERK to A. G. BILASPUR

(2)

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN THE NATURE OF MANDAMUS, CERTIORARI, PROHIBITION ETC.

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक WP 6572/05 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

3-1-2006

Shri Pankaj Shrivastava, counsel for the petitioner.

Shri S.P. Kale, Govt. Advocate for the State.

Application for urgent hearing is allowed.

Heard on I.A. No.11090/05 for exemption from filing typed copies of the documents.

The application is allowed. Exemption is granted from filing typed copies of the documents.

Heard.

Learned counsel for the petitioner submits that the transfer order dated 17/8/2004 (Annexure-P/2) issued against the petitioner is mala fide.

Learned counsel very repeatedly made a statement that it is a mala fide transfer order. He was asked to read the allegation of mala fide against the State and its officials. Counsel stated that out of 15 transferred persons, the transfer of the petitioner has been shown on administrative ground. He stated that this itself is sufficient to indicate that the transfer order is mala fide.

On perusal of the order dated 17/8/2004, it is noted that the State Govt. has considered the cases of persons of the department, who were working at different places in different districts. The persons named at serial nos.1,2,5,6,7,9,10,11,12,13,14 and 15 have been transferred on their own expenses whereas the persons named at serial nos.3 and 4 have been transferred on mutual consent. The petitioner's name is mentioned at serial no.8, who has been transferred on administrative ground. The transfer order is passed by

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आदेश का॰ दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

order and in the name of the Governor and the State Government has implemented the same. State Government is empowered to consider the cases of the persons working in the government department. If the joint order has been issued, it cannot be said that merely because the names of the persons of various categories are there so it is mala fide. Apart from the above, none has been posted in place of the petitioner so that it can be said that to adjust somebody the petitioner has been ousted.

On perusal of the record, it appears that the petitioner had earlier filed the writ petition before this Court bearing W.P. No.2917/2004 which was decided vide order dated 20/9/2004 (Annexure-P/3) affording the petitioner to make a detailed representation raising his grievances before the competent authority of the respondents alongwith a copy of the petition and the order within ten days and on such representation being filed the competent authority of the respondents shall decide the same on its own merits in accordance with law as early as possible preferably within six weeks from the date of receipt of the representation.. Copy of the said order was supplied to the petitioner on 24/9/2004 and the petitioner submitted his joining on 30/9/2004 alongwith a copy of the order of this Court. Thereafter, the petitioner submitted the detailed representation on 2/12/2004. Nevertheless, notice was issued to the petitioner and he was heard on 28/11/2005. State considered this belated representation as well which was filed and passed the impugned order dated 5/12/2005 (Annex.P/1) whereby the representation of the petitioner was rejected.

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It has been categorically stated by the State counsel that the complaints are pending against the petitioner. It is further submitted that the order Annex.P/1 shows that the transfer order Annex.P/2 was issued on administrative ground as the complaints against the petitioner were pending.

On the other hand, learned counsel for the petitioner submits that there is no complaint against him whereas he has filed several complaints against other persons.

Learned counsel for the petitioner was pointedly asked as to whether he has stated so on affidavit. Counsel read paras 5.9 and 5.10 of the instant petition wherein it has been mentioned that on 17/8/2004 the respondents have transferred the petitioner on administrative ground and no where mentioned that the petitioner was transferred due to complaints received against him and now by rejecting the representation they are saying that the petitioner was transferred because certain complaints were received against him, which also denotes that the statement of the respondents. It was also stated that according to the policy Government itself if an employee is transferred due to certain complaints made against him then an enquiry has to be conducted and after giving an opportunity of hearing to the employee he can be transferred. It was also stated that in case of the petitioner no enquiry whatsoever was conducted by the respondents nor any notice etc. was issued to the petitioner and therefore the contention of the respondents that the petitioner was transferred due to certain complaints made against him is baseless, arbitrary and void.

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Learned counsel for the State on the other hand submits that the transfer is an exigency of service and the petitioner is having no right to be posted at a particular place.

This Court while deciding Writ Petition No. 2007/2004 (Ferro Scrap Nigam Limited vs. B.P. Sharma and others) on 6/1/2005 has dealt with the matter of transfer wherein the allegation of mala fide was made by the employee. In paras 21 and 22 of the said order, it was held as under:

> *"21. Having considered the rival contention of the learned counsel for the parties, in the opinion of this Court, the transfer is an exigency of service. It is well settled that no government servant or employee of public undertaking has any legal right to be posted forever at any one particular place as it is not only an incident but a condition of service. The contention of learned counsel for respondent that he cannot be transferred is not correct. That part of the order of the learned Industrial Court is not sustainable. The finding of the Industrial Court that respondent no. 1 cannot be transferred is against the canon of service jurisprudence.*
>
> *22. As regards the findings of the courts below regarding mala fide that sine the respondent no. 1 was earlier terminated but the court directed his reinstatement and some litigation regarding promotion is pending, he has been transferred, there is no material to hold that the transfer has been effected because of this. It is stated that learned industrial court has held that there is no cordial relation between the petitioner and respondent no. 1. Even when cordial relation is not there between the employer and employee, it cannot be said that the transfer has been made only because of that reason. In certain cases, if situation warrants, the transfer has to be made as*

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exigency or in the interest of the employee. The finding of the learned labour court and that of the learned industrial court that the transfer has been made with mala fide intention and to harass respondent no. 1. is not sustainable."

This Court has also recently considered the aforesaid issue regarding transfer of an employee in W.P.No.4960/2005 (*N.D. Atulkar vs. State of Chhattisgarh & Others*) and has held that it is well settled by a catena of decisions of the Apex Court and High Courts that transfer of a Government or public servant who is appointed to a cadre of transferable post from one place to another, is an ordinary incident of service and, therefore, does not result in any alteration of conditions of service to his disadvantage and therefore, transfer cannot be said to be punitive in nature. Transfer is an incident of service and an employee has no right to be posted at a particular place. An employee holding a transferable post has no legal right to insist for his posting at a particular place of his choice. Transfer of public servant made on administrative grounds of public interest should not be interfered with by the Courts unless there is strong and pressing grounds rendering the transfer order illegal on the ground of violation of mandatory statutory rules or on the ground of mala fide or on the ground of lack of authority. The Courts or the Tribunals cannot sit as appellate Court on the orders of the transfers made on administrative grounds. The reason for this self imposed restraint is that the wheels of administration should be allowed to run smoothly and the Courts or the Tribunals are not expected to interdict the administrative system.

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The Supreme Court in the case of *Gujrat Electricity Board vs Atmaram Sungomal Poshani* reported in *(1989) 2 SCC 602* held that transfer is an incident of service and employee has no right to be posted at a particular place and that transfer cannot be evaded merely on the ground of pendency of representation or difficulties. The Apex Court further in the case *Mrs. Shilpi Bose vs. State of Bihar* reported in *AIR 1991 SC 532* has held that the Courts should not interfere with transfer orders when are made in public interest or on administrative grounds unless they are made in violation of mandatory statutory rules or on the ground of mala fide and that even where executive instructions are violated, the Court ordinarily shall not interfere and the concerned transferee employee should approach the higher-ups in the department for the relief. In the same decision, it is also held that even where the transfer is effected on request of employees to avoid hardship, the same should not be interfered with by the Courts.

In the case of *Union of India vs. S.L. Abbas* reported in *(1993) 4 SCC 357* the Supreme Court has held that no employee has any vested right to seek transfer to a place of his choice. Furthermore, in *State of Madhya Pradesh vs. S.S. Kourav* reported in *(1995) 3 SCC 270* the Apex Court held that the Court cannot decide relative hardship; it is for the administration to appreciate on a representation that may be made by the concerned employee and that hardship caused to an employee from transfer is not and cannot be a ground for judicial review of the transfer order. To the same effect is the decision of the Apex Court in *Union of India vs. H.N. Kirtania* reported in *(1989) 3 SCC 445*. In *Abani Kanta Ray vs. State of Orissa* reported

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in *1995 Suppl.(4) SCC 169* , the Supreme Court opined that a transfer which is an incident of service is not to be interfered with by the Courts unless it is shown to be clearly arbitrary or vitiated by mala fides or infraction of any professed norm or principle governing the transfer. In *Chief General Manager (Telecom) vs. Rajendra* reported in *(1995) 2 SCC 532*, the Supreme Court handed down the opinion that in the absence of strong and compelling grounds rendering the transfer order improper or unjustified, such an order should not be subjected to judicial review particularly when at the other place to which the transferee wanted to be retained or posted, there were complaints against him.

Learned counsel for the petitioner also referred to Annexure-P/10 to show that the documents were not sent whereas it shows that the documents were sent by registered post but the petitioner was not found on the address given.

On perusal of the record, it appears that the petitioner has been transferred on administrative ground. The transfer order is passed by order and in the name of the Governor and the State Government has implemented the same. State Government is empowered to consider the cases of the persons working in the government department. If the joint order has been issued, it cannot be said that merely because the names of the persons of various categories are there so it is mala fide. Apart from the above, none has been posted in place of the petitioner so that it can be said that to adjust somebody the petitioner has been ousted.

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H/-	Having thus considered the facts and circumstances and the material on record and in view of the law laid down by the Apex Court in the aforesaid cases and further the fact that the transfer is an exigency of service, not a case for interference by this Court under Article 226/227 of the Constitution of India. So far as the complaints made by the petitioner and the complaints made against the petitioner are concerned, it is open to the State to look the same as per the provisions of law and deal accordingly. Accordingly, the petition fails and is dismissed. Sd/- Fakhruddin Judge	

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